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April 29, 1998

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APR 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Amendment of
Section 73.202(b) of the Commission's Rules
Table of FM Channel Allotments
Radio Station WPEZ(FM)
Macon, Georgia
U. S. Broadcasting Limited Partnership
(MM Docket No. 98-18. RM-9204)

Dear Mr. Salas:

Submitted herewith for filing, on behalf of our client, U. S. Broadcasting Limited Partnership, licensee of Radio Station WPEZ(FM), Macon, Georgia, are an original and four copies of its Reply Comments in support of the Commission's proposal to reallocate FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and to modify WPEZ(FM)'s license to specify operations on Channel 300C1 in Hampton, Georgia, following the proposed rulemaking. These proposals by the Commission were set forth in the Notice of Proposed Rule Making, _____ FCC Rcd _____, DA 98-289 (Allocations Branch, Policy and Rules Division, Mass Media Bureau, released February 20, 1998).

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER, LLP

By: 

Irving Gastfreund

Enclosures

cc: Michael J. Golub, Esq. (w/encl.)

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

APR 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment Of Section 73.202(b) of the)	MM Docket No. 98-18
Commission's Rules)	RM-9204
)	
Table of Allotments For FM Broadcast Stations)	
(Macon, Georgia, and Hampton, Georgia))	

TO: Chief, Mass Media Bureau

REPLY COMMENTS OF
U.S. BROADCASTING LIMITED PARTNERSHIP

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Partnership

April 29, 1998

Table of Contents

	<u>Page</u>
Table of Contents.....	i
Summary.....	ii
I. Introduction.....	2
II. Argument.....	3
A. The Dogwood Submission is Devoid of Merit.....	3
B. The Cox Submission is Lacking in Merit.....	11
III. Conclusion.....	16

Summary

The Commission should expeditiously dismiss or deny the following two pleadings filed in this proceeding: (1) Comments and Counterproposal, filed April 13, 1998, on behalf of Dogwood Communications, Inc. (“Dogwood”) and (2) Comments of Cox Radio, Inc., filed on April 13, 1998, on behalf of Cox Radio, Inc. (“Cox”).

The Dogwood alleged “counterproposal” is predicated on the pending WAMJ(FM) one-step upgrade application. However, that application is defective and unacceptable for filing. Hence, the entirety of Dogwood’s alleged “counterproposal” must be summarily rejected as unacceptable for filing. Moreover, Dogwood’s alleged “counterproposal” should be rejected summarily, since it constitutes an unauthorized competing expression of interest with respect to USBLP’s proposal. In any event, if Dogwood’s one-step upgrade proposal for WAMJ(FM) were to be compared, on a channel allotment basis, with USBLP’s instant upgrade proposal for WPEZ(FM), USBLP’s proposal would have to prevail, under established Commission policies and precedent, since the USBLP proposal for WPEZ(FM) would be entitled to a first local service allotment priority preference, whereas no such preference can properly be given to the one-step upgrade proposal for Dogwood for WAMJ(FM), which is already situated inside the Atlanta Urbanized Area. Furthermore, even if it were to be assumed, arguendo, that the instant rulemaking proposal regarding USBLP’s WPEZ(FM) were of co-equal weight with the proposal of Dogwood, nonetheless, under the Commission’s allotment priorities, there would be no basis for Dogwood’s position that the Commission should modify the Hampton, Georgia, reference point (assuming, of course, that Dogwood’s alleged counterproposal were not subject to summary dismissal, as required by USBLP). More specifically, no public interest need for

modification of the Hampton, Georgia, reference coordinates exists, notwithstanding Dogwood's requests to the contrary. If Dogwood had filed with the Commission a one-step upgrade application for WAMJ(FM) at the allotment reference point coordinates for Roswell, Georgia, any such application for WAMJ(FM) to operate as a Class C3 station at that reference location on Channel 298 would not be mutually-exclusive with the USBLP rulemaking proposal for WPEZ(FM). Yet, nonetheless, Dogwood has voluntarily chosen to specify a short-spaced transmitter site for its upgrade application at a location other than the Roswell, Georgia reference coordinates. Presumably, this choice was made by Dogwood for its own private, parochial, pecuniary interests. Under these circumstances, there is no basis whatsoever for Dogwood's request that the Commission go so far as to actually relocate the Hampton, Georgia, reference coordinates much further away from Hampton via a site restriction, merely to give more breathing room to the short-spaced transmitter site actually chosen by Dogwood.

Similarly, the Cox Comments in this proceeding are equally as devoid of merit as are those of Dogwood. Contrary to Cox' raw speculations, Hampton, Georgia, is not located within the Atlanta Urbanized Area, and there is no rational basis for Cox' mere speculations, at this time, as to what changes, if any, to the listing of Urbanized Areas will be made by the U.S. Census Bureau after the next U.S. Census, which is scheduled for the year 2000. Nor is there any basis for Cox' ruminations that USBLP's instant proposal is not entitled to a first local service allotment priority preference. Moreover, contrary to Cox' allegations, proprietors of commercial businesses in Hampton, Georgia, state unequivocally that they do not view Hampton, Georgia, as part of the Atlanta, Georgia market for their advertising purposes.

In light of all the foregoing, there is no merit to the respective positions of either Dogwood or Cox, and their respective submissions in this proceeding should be expeditiously

dismissed or denied and USBLP's rulemaking proposal for WPEZ(FM) should be expeditiously granted in the public interest.

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment Of Section 73.202(b) of the)	MM Docket No. 98-18
Commission's Rules)	RM-9204
)	
Table of Allotments For FM Broadcast Stations)	
(Macon, Georgia, and Hampton, Georgia))	

TO: Chief, Mass Media Bureau

REPLY COMMENTS OF
U.S. BROADCASTING LIMITED PARTNERSHIP

U.S. BROADCASTING LIMITED PARTNERSHIP ("USBLP"), licensee of Radio Station WPEZ(FM), Macon, Georgia, by its attorneys, pursuant to Sections 1.415 and 1.420 of the Commission's Rules, and pursuant to the Mass Media Bureau's Notice of Proposed Rule Making, ____ FCC Rcd ____, DA 98-289 (Allocations Branch, Policy and Rules Division, Mass Media Bureau, released February 20, 1998) (NPRM), hereby submits its instant Reply Comments with respect to the following two pleadings filed in the above-captioned proceeding:

(1) Comments and Counterproposal, filed on April 13, 1998, on behalf of Dogwood Communications, Inc. ("Dogwood") and (2) Comments of Cox Radio, Inc., filed on April 13, 1998, on behalf of Cox Radio, Inc. ("Cox").¹ In support whereof, it is shown as follows:

¹ Under the NPRM herein, the deadline for the submission of reply comments in this proceeding was April 28, 1998. However, on that date, USBLP filed with the Commission its Consent Petition for Extension of Time and for Acceptance of Late-Filed Reply Comments ("Consent Petition"). In that submission, USBLP requested, on the basis of unanimous consent from other counsel in this proceeding, a one-day extension of time, to and including Wednesday, April 29, 1998, within which USBLP, Dogwood and Cox may file Reply Comments in this proceeding. As noted in the Consent Petition,
(continued...)

I. Introduction

The Commission's NPRM in this proceeding was issued as a consequence of the filing with the Commission by USBLP of its Petition for Rulemaking on November 19, 1998.

Pursuant to the NPRM, on April 13, 1998, USBLP filed its Comments herein, in which it advised the Commission, pursuant to Paragraph 7 of its NPRM herein, that USBLP has a continuing interest in adoption by the Commission of the changes in the Table of FM

¹ (...continued)

unfortunately, as a result of word processing problems encountered by counsel for USBLP, it was not possible to file USBLP's instant Reply Comments with the Commission by the close of business on April 28, 1998. Consequently, in discussions held informally on the afternoon of April 28, 1998 by counsel for USBLP with counsel for Dogwood and Cox, it was informally agreed among such counsel that a one-day extension of time, to and including April 29, 1998, would be requested by counsel for USBLP on a consent basis, so as to enable USBLP and Dogwood and Cox to file reply comments in this proceeding by the close of business on April 29, 1998 -- i.e., only one day out of time. Consequently, the respective counsel for Dogwood and Cox consented to a grant of the Consent Petition and to grant of the relief requested therein. The Consent Petition is hereby incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the public interest, convenience and necessity would best be served by grant of the brief, one-day extension of time requested therein, so as to enable USBLP to submit its instant Reply Comments in this proceeding on April 29, 1998. Acceptance by the Commission of USBLP's instant Reply Comments one day out of time, and grant of the requested extension of one day, would facilitate the development of a more complete record by the Commission in this proceeding, thereby resulting in more informed decisionmaking by the Commission in this matter. Moreover, as shown in the Consent Petition, no party will be prejudiced by grant of the one-day extension requested therein or by acceptance of USBLP's instant Reply Comments only one-day out of time, as is evidenced by the fact that all private parties have consented to the Consent Petition and to the grant of the relief requested therein. Under these circumstances, it is respectfully requested that the Commission grant of USBLP a one-day extension of time, to and including today, April 29, 1998, within which to file its instant Reply Comments in this proceeding and that the Commission should accept USBLP's instant Reply Comments as late-filed by one day. The Commission's staff was informally advised of the filing of the Consent Petition on the afternoon of April 28, 1998, and copies of the Consent Petition were transmitted via facsimile to the respective counsel for Dogwood and Cox on the afternoon of April 28, 1998. In addition, copies of the Consent Petition were transmitted via hand-delivery on April 28, 1998, to the Commission's staff in the Allocations Branch of the Policy and Rules Division of the Commission's Mass Media Bureau.

Allotments, as proposed in the NPRM in this proceeding. As shown in USBLP's Comments, USBLP supported the Commission's proposals for (a) modification of the Commission's Table of FM Channel Allotments (Section 73.202(b) of the Commission's Rules) to: (i) delete FM Channel 300C1 from Macon, Georgia; and (ii) add FM Channel 300C1 to Hampton, Georgia; and (b) modification of the license of Radio Station WPEZ(FM) to specify operations on FM Channel 300C1 in Hampton, Georgia, in lieu of operation on Channel 300C1 in Macon, Georgia. In addition, in its Comments, USBLP advised the Commission that it incorporated by reference the entirety of its Petition for Rulemaking in this proceeding. Moreover, USBLP advised the Commission in both its Comments and its Petition For Rulemaking herein, that it intends to apply for a construction permit for WPEZ(FM) to operate on Channel 300C1 if that channel is reallocated to Hampton, Georgia, as proposed, and that, if USBLP were to be authorized to construct the facilities of WPEZ(FM) on Channel 300C1 in Hampton, Georgia, USBLP would promptly build a station in that community on that channel..

On the April 13, 1998, comment deadline in this proceeding, Comments were filed by Dogwood and Cox as shown above. Both of those submissions were in opposition to the USBLP upgrade proposal for WPEZ(FM) in this rulemaking proceeding. However, for the reasons set forth below, the respective Comments of Dogwood and Cox are devoid of any merit and should be promptly dismissed or denied. The USBLP proposals for WPEZ(FM), as set forth in the Commission's NPRM herein, should therefore be promptly granted in the public interest.

II. Argument

A. The Dogwood Submission is Devoid of Merit

Dogwood is the permittee of Radio Station WAMJ(FM), Roswell, Georgia, which Dogwood claims is within the Atlanta, Georgia, Urbanized Area. Dogwood is presently

operating WAMJ(FM) pursuant to Program Test Authority, pending Commission action on its pending license application for WAMJ(FM). After the date of release of the full text of the NPRM in this proceeding, Dogwood tendered for filing with the Commission a so-called “one-step” application (File No. BMPH-980309IE) to upgrade WAMJ(FM) from a Class A to a Class C3 facility on Channel 298 in Roswell, Georgia. The “one-step” upgrade application for WAMJ(FM) specifies two sets of coordinates: The first set is for the reference coordinates for Roswell, Georgia, and the second is for the actual short-spaced transmitter site which is proposed in Dogwood’s application. For convenience, a copy of Dogwood’s one-step upgrade application for WAMJ(FM) is annexed hereto as Exhibit 5. Hence, Dogwood claims that its one-step upgrade application for WAMJ is mutually-exclusive with the instant rulemaking proposal for WPEZ(FM); Dogwood suggests that the Commission must resolve this alleged mutual exclusivity in this rulemaking proceeding. Specifically, Dogwood suggests that the Commission should reject the proposed reallocation of WPEZ from Macon to Hampton, and, instead, grant Dogwood’s proposed one-step upgrade application for WAMJ(FM) at the clearly short-spaced actual transmitter site relied upon by Dogwood in its one-step upgrade application. In the alternative, Dogwood requests imposition of a site restriction on the USBLP proposal away from Hampton of at least 26.5 km, merely to accommodate Dogwood’s short-spaced proposed actual transmitter site , as specified in its one-step upgrade application.

In making the determination as to whether there would be a preferential arrangement of allotments, the Commission has long-established FM allocation priorities; that is, priorities which seek to provide the following, in descending order of priority:

1. First full-time aural broadcast reception service;
2. Second full-time aural broadcast reception service;

3. First local broadcast transmission service; and
4. Other public interest factors.

Co-equal weight is given to priorities (2) and (3) above. See Community of License, 4 FCC Rcd 4870 - 4973 and n.8 (1989); Faye and Richard Tuck, Inc., 3 FCC Rcd 5374, 5376 (1988); Parker & Port St. Joe, Florida, 11 FCC Rcd 1095 (Mass Media Bureau 1996).

As shown in USBLP's Comments herein, the proposed reallocation of FM Channel 300C1 from Macon to Hampton, Georgia, as proposed herein by USBLP and the Commission, would clearly constitute a first local broadcast transmission service in Hampton, Georgia, thereby satisfying the above-described FM Allocation Priority No. 3. As shown in USBLP's Comments, the proposed channel reallocation would result in a net service gain of 1,959,550 persons (based on 1990 U.S. Census Bureau data) in an area of 15,464 square km (based on the proposed 60 dBu contour of WPEZ(FM)), as compared with a net loss of only 403,028 persons in an area of only 12,307 square km. In short, as shown in USBLP's Comments, the proposed reallocation would bring new FM service to significant additional areas and populations. This fact alone constitutes one "other public interest factor", thereby satisfying FM Allocation Priority No. 4, above.

In Community of License, 5 FCC Rcd 7094 (1990), the Commission stated that it would not blindly apply the "first local service" FM Allocation Priority for the "first local service" preference when a station seeks to reallocate an FM channel from a rural community to a suburban community of nearby Urbanized Area (as recognized by the U.S. Census Bureau). Id. at 7096.

¶13. Rather, the Commission indicated that it would continue to apply its existing precedents ²

² See, e.g., Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Ruck, 3 FCC Rcd 5374 (continued...)

in this area and delegated to the Commission's staff the application of those precedents to specific factual situations. Community of License, *supra*, 5 FCC Rcd at 7096. As a result, the Commission's staff has applied these precedents so as to require stations that had sought to reallocate their channels and to modify their licenses from rural a community to a suburban communities within an Urbanized Areas (as designated by the U.S. Census Bureau) to make a showing that the suburban community warrants a "first local service" allotment preference. *See, e.g., Elizabeth City, North Carolina*, 7 FCC Rcd 6815 (1992).

However, by way of contrast, the Commission has not required such a showing to be made in cases, as here, where a station seeks to reallocate its channel and to modify its license from a rural community to another community that is located closer to, but outside of, a U.S. Census Bureau- designated Urbanized Area.

The Commission has stated that it would henceforth require the licensee of a station seeking to move from rural communities to suburban communities located outside of a U.S. Census Bureau designated Urbanized Areas (but, nonetheless near such Urbanized Area) to make the same showing that the Commission currently requires of stations under existing precedents which are seeking to move into such Urbanized Areas if, and only if, the station in question would place a city-grade (i.e., 70 dBu) signal over 50 percent or more of the Urbanized Area. Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352, 10354 (Mass Media Bureau 1995).

In this case, however, as shown in USBLP's Comments herein and as noted by the Bureau in its NPRM herein, the proposed operation of WPEZ(FM) as licensed to Hampton,

² (...continued)
(1988).

Georgia, would place a city-grade (i.e., 70 dBu or 3.16 mV/m) or greater signal over no more than 17.8 percent of the Atlanta, Georgia, Urbanized Area (as designated by the U.S. Census Bureau), and no signal would be placed by the proposed WPEZ(FM) facilities over any part of any other Urbanized Area. As shown in USBLP's Comments, the proposed new community of license -- i.e., Hampton, Georgia -- is not located in the Atlanta Urbanized Area or in any other Urbanized Area; rather, Hampton, Georgia, is located approximately 8 km to the south of the southern-most edge of the Atlanta, Georgia, Urbanized Area.

In light of these considerations, under Commission policy, as established in Headland, Alabama and Chattahoochee, Florida, supra, USBLP's instant request to change WPEZ(FM)'s community of license is not subject to the provision by USBLP of any additional information responsive to an analysis under Faye and Richard Tuck, supra, and other cases, to determine whether the City of Hampton, Georgia, is sufficiently "independent" of Atlanta to merit a "first local service" channel allotment preference. Rather, in light of the facts set forth above, where, as here, such a "first local preference" exists, it should be fully credited to USBLP, in light of all the circumstances here presented.

Nonetheless, USBLP demonstrated, in its Comments, that Hampton, Georgia, is not only a specific community for allotment purposes, but also that Hampton is independent from Atlanta, Georgia, based on the eight factor test set forth in Elizabeth City, North Carolina and Chesapeake, Virginia, 9 FCC Rcd 3586 n. 7 (1994).

Significantly, in Paragraph 3 of its NPRM herein, the Mass Media Bureau held as follows:

"[T]he Commission requires parties seeking to relocate a station from a community outside an Urbanized Area to either one within an Urbanized Area or a community from which the station would place a city grade (70 dBu) signal

over 50% or more of a central city to justify a first local service preference. [Footnote omitted.] In this case, petitioner submits a showing that a Hampton station, with maximum Class C1 facilities, will provide coverage to only 17.8 percent of the [Atlanta] urbanized area. Therefore, it states that a Tuck showing demonstrating the independence of Hampton from Atlanta is not necessary. [Footnote omitted.] However, based on the information provided and set forth in paragraph 2 supra, we believe that Hampton would be found to be independent of Atlanta.”

NPRM at ¶3.

Notwithstanding the foregoing, and notwithstanding the clear showings of independence of Hampton from Atlanta made by USBLP and relied upon by the Mass Media Bureau in its NPRM herein, Dogwood attempts to reject the findings by the Mass Media Bureau’s NPRM and to ignore completely Commission policy in Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (Mass Media Bureau 1995), by arguing that the Bureau should nonetheless focus on coverage of an Urbanized Area with a 60 dBu contour -- i.e., a signal strength which amount to a drop from city grade service (3.16 mV/m) to bare one mV/m coverage. Dogwood Comments at 4. Of course, Dogwood’s entire approach is completely contrary to established Commission policy, as articulated in the Commission’s NPRM in this proceeding and in USBLP’s Comments. See Headland, Alabama, and Chattahoochee, Florida, supra, 10 FCC Rcd at 10354. Accordingly, Dogwood’s showings must be completely ignored.

Under these circumstances, Dogwood has made no showing justifying any determination other than the fact that USBLP is entitled to a first local service allotment priority in this proceeding.

It should also be noted that, in its NPRM herein, the Bureau stated as follows:

“In accordance with Section 1.420(i) of the Commission’s rules, competing expressions of interest in use of Channel 300C1 at Hampton will not be accepted....”

Under these circumstances, USBLP submits that Dogwood's alleged "counterproposal" is unacceptable for filing in this proceeding.

In any event, even if this procedural flaw were not applicable to Dogwood's submission, it must be stressed that Dogwood's alleged counterproposal is the specific technical proposal set forth in Dogwood's presently pending one-step upgrade application for WAMJ(FM) (i.e., File No. BMPH-980309IE). Hence, to the extent that that application was improvidently accepted for filing, or to the extent that the application is otherwise subject to dismissal, Dogwood would have no viable counterproposal upon which to rely in this proceeding.

Annexed hereto as Exhibit 1 is the Engineering Statement of L. Robert du Treil, Sr., an engineer with the consulting engineering firm of du Treil, Lundin, Rackley, Inc., who serve as consulting engineers to USBLP. For the reasons set forth in that Engineering Statement, Dogwood's one-step upgrade application presently proposes a transmitter site which is short-spaced and entirely unacceptable under existing Commission Rules and policies. Accordingly, it is respectfully submitted that Dogwood's one-step upgrade application for WAMJ(FM) is unacceptable for filing and manifestly ungrantable and should therefore be expeditiously dismissed as unacceptable for filing. USBLP intends to expeditiously file a formal Petition to Dismiss against Dogwood's application, expressly seeking such relief. Under these circumstances, Dogwood has no viable application on file, and, accordingly, its instant Comments and Counterproposal in this proceeding should be summarily rejected without consideration, or, alternatively, even if considered, Dogwood's submission should be expeditiously denied.

In any event, even if considered on its alleged "merits", Dogwood's alleged "counterproposal" must be rejected. As shown above and in USBLP's Comments herein,

USBLP's proposal is entitled to a first local transmission service allotment priority, whereas the community of Roswell, Georgia, which is admitted by Dogwood to be situated within the Atlanta Urbanized Area, is not entitled to a first local broadcast transmission service priority, particularly since Dogwood has not made any showing that Roswell is not independent from Atlanta under existing Commission policy. Indeed, Roswell is located within the Atlanta Urbanized Area. Accordingly, if a choice in allotment priorities had be made as between USBLP's instant rulemaking proposal for WPEZ(FM) on the one hand, or the one-step upgrade proposal of Dogwood for WAMJ(FM) on the other hand, existing Commission policy would mandate a determination in favor of USBLP's proposal. See Community of License, 4 FCC Rcd 470 (1989).

Even if it were to be assumed, arguendo, that the instant rulemaking proposal regarding USBLP's were of co-equal weight with that of Dogwood, under the Commission's allotment priorities, nonetheless, there would be no basis for Dogwood's position that the Commission should modify the Hampton, Georgia reference point (assuming, of course, that Dogwood's alleged counterproposal were not subject to summary dismissal, as requested above). In this connection, in its decision to permit one-step upgrade applications, the Commission acknowledged that there could be conflicts between such applications and rulemaking petitions. Conflicts Between Applications and Petitions For Rule Making to Amend the FM Table of Allotments, 73 RR 2d 222 (1993). The Commission stated that it would endeavor to resolve such conflicts by imposing a site restriction on the rulemaking petition or by allotting an alternate channel for that proposed in the petition, if such action were required. Id. at 225, n. 12. New Boston, Texas and Idabell, Oklahoma, 12 FCC Rcd 15222 (Mass Media Bureau 1997).

However, for the reasons set forth in the Engineering Statement which is annexed hereto as Exhibit 1 which is incorporated herein in its entirety by reference, a search conducted USBLP's engineering firm did not reveal the availability of any alternative Class C3 channel for WAMJ(FM). Moreover, as is shown in Exhibit 1 hereto, no public interest need exists for modification of the Hampton, Georgia, reference coordinates, as is requested by Dogwood. In this regard, as is shown in Exhibit 1, if Dogwood had filed with the Commission a one-step upgrade application for WAMJ(FM) at the allotment reference point coordinates for Roswell, Georgia, any such application for WAMJ(FM) to operate as a Class C3 station on Channel 298 at that reference site location would not be mutually exclusive with the USBLP rulemaking proposal for WPEZ(FM). Yet, nonetheless, Dogwood has voluntarily chosen, presumably for its own private parochial pecuniary interests, to specify a short-spaced transmitter site at a location other than the Roswell, Georgia reference coordinates. Dogwood therefore requests that the Commission go so far as to actually relocate the Hampton, Georgia reference coordinates much further away from Hampton via a site restriction, merely to give more comfort and breathing room and protection to the short-spaced transmitter site actually chosen by Dogwood and specified in its upgrade application for WAMJ(FM). For the reasons set forth in Exhibit 1, there is no factual or legal basis for the Commission to protect such a voluntarily-chosen short-spaced transmitter site by relocating the Hampton reference point.

For all these reasons, the Dogwood counterproposal is totally lacking in any merit and should be summarily dismissed or denied.

B. The Cox Submission is Lacking in Merit

The Cox Comments in this proceeding are equally as devoid of merit as are those of Dogwood. Cox also argues, without sufficient basis, that the USBLP proposal for WPEZ(FM)

does not warrant a first local transmission service allotment priority. Cox Comments at 2. Cox further admits that Hampton does not exist within the Atlanta Urbanized Area. Id. However, Cox suggests that the Commission ought to consider the Atlanta Urbanized Area to include Hampton, in light of the growth of the Atlanta Urbanized Area in past years. In this regard, Cox cites to an alleged “telephone interview” with Jim Skinner, a Senior Planner of the Research Division of the Atlanta Regional Commission, for the proposition that “... the Atlanta Regional Commission believes that the 2,000 census may show Hampton within the Atlanta Urbanized Area. [Footnote omitted, emphasis added.]” Cox Comments at 3.

These raw speculations conveniently ignore applicable Commission policy, as described above. Moreover, it does not appear that Mr. Skinner is of the view ascribed to him by Cox. In this regard, annexed hereto as Exhibit 2 is the Declaration of Mr. Skinner. Mr. Skinner therein asserts, not only that Hampton is not presently within the Atlanta Urbanized Area, as defined by the 1990 U.S. Census, but also that:

“We do not possess sufficient demographic information to determine with certainty that Hampton, Georgia, will be included within the Atlanta Urbanized Area following the year 2000 Census. [Emphasis added.]”

Annexed to Mr. Skinner’s Declaration are copies of certain maps, and Mr. Skinner advised counsel for USBLP that counsel for Cox also obtained copies of those maps from him.

Cox’ argument that Hampton ought to be viewed as being within the Atlanta Urbanized Area rests upon the false premise that the 1990 U. S. Census Bureau data should not be relied upon by the Commission as the common indicator of relevant population. In fact, as shown above, Commission policy is otherwise. Moreover, the Constitutional mandate to the U.S. Bureau of the Census is to perform a census every ten years, with the expectation that the data generated thereby will be relied upon by the United States until the completion of the next

census. Just as the U.S. Census data is used to apportion seats in Congress during the ten-year period prior to the next successive census, it is entirely reasonable for the Commission to look to the 1990 U.S. Census data in making determinations in rulemaking proceedings, at least until such time as the next U.S. Census arrives at new data, including any new Urbanized Areas. Simply stated, there is no more accurate or more reliable information available which is authoritatively determined by the U.S. Census.

Even if Cox' argument were to be entertained by the Commission, it is weak at best. More specifically, Cox cites various population statistics in support of its broad contention that Atlanta's recent growth, on its own, should be interpreted to mean that Hampton now should be viewed as technically lying inside the Atlanta Urbanized Area. However, Cox presents no evidence whatsoever concerning this contention.

USBLP has been advised by the U.S. Department of Commerce's Bureau of the Census, not only that Hampton, Georgia lies outside the boundaries of the Atlanta Urbanized Area, but also that it is not possible to assess on a current basis whether Hampton would at some point in the future be considered part of the Atlanta Urbanized Area, since the criteria for determining what constitutes an "Urbanized Area", within the meaning of Census Bureau policies, is undergoing a review by the Bureau at this time and may therefore be modified at some point in the future. Annexed hereto as Exhibit 3 is a letter dated April 27, 1998, from Joel L. Morrison, Chief of the Geography Division of the U.S. Bureau of the Census, in which it is stated that:

"The City of Hampton was not included in the 1990 Atlanta, Georgia Urbanized Area, and the Bureau of the Census will not be redefining urbanized areas until after receiving the results of Census 2000. Additionally, the criteria for defining urbanized areas for Census 2000 is presently undergoing review and may be revised."

Cox relies on the State Data and Research Center of the Georgia Institute of Technology in contending that Hampton's population has grown from 2,694 persons in 1990 to an estimated 4,311 persons in 1996, an increase of 62 percent, according to Cox. Such a population increase, even if it occurred, would not actually amount to a 62 percent increase, however. Hampton's population, as of April 1, 1997, is, in actuality, only 3,401 persons, according to the Atlanta Regional Commission. This represents a 26 percent increase in population over the 1990 U.S. Census population figure -- i.e., far lower than Cox' claimed 62 percent population increase.

Cox relies on population growth figures to assert that the "population explosion has pushed the boundaries of the Atlanta Urbanized Area outward in dramatic leaps". As an illustration, Cox attached to its Comments a purported map of the Atlanta Urbanized Area. However, Cox failed to point out that the map shows that Hampton is actually outside of the boundaries of the Atlanta Urbanized Area.³ Cox' entire purported "showing" concerning alleged lack of independence as between Hampton and Atlanta is predicated on its willingness to ignore applicable Commission policy, as established above, which clearly mandates that no such showing of independence is required. Nonetheless, as noted above, USBLP has made such a showing in its Comments herein.

³ As shown above, Cox' speculations concerning the extent of the Atlanta Urbanized Area in the future are self-serving and carry no weight in this proceeding. Its guess as to whether or not Hampton may some day fall within the Atlanta Urbanized Area after the 2000 Census is nothing more than unadulterated speculation and surmise and thus cannot be relied upon by the Commission in this proceeding. Moreover, a representative of the Atlanta Regional Office of the U.S. Bureau of the Census confirmed to counsel for USBLP that 1996 estimated population data does not indicate that Hampton is presently within the Atlanta Urbanized Area and that parts of Clayton County -- not Hampton -- could conceivably be the next area to be incorporated into the Atlanta Urbanized Area in the direction of Hampton. Telephone interview with Ms. Mary Vetter, U.S. Bureau of the Census, Atlanta Regional Office (April 22, 1998). Accordingly, there is no basis whatsoever for Cox' raw surmise and wishful thinking that Hampton is now or will be, in the future, within the Atlanta Urbanized Area.

Nor is there any basis whatsoever for Cox' absurd suggestion that USBLP's rulemaking proposal should be entitled to no more than consideration under Allotment Priority No. 4 for "other public interest matters". As shown above, the USBLP proposal is entitled to a first local service allotment priority preference.

Cox claims, in its Comments, that Hampton is treated as part of the Atlanta market by advertisers. Cox Comments at 7. This allegation is not true. Annexed hereto as Exhibit 4 is a grouping of 10 Declarations from proprietors of commercial businesses in Hampton, Georgia. Those proprietors state unequivocally that they do not view Hampton as part of the Atlanta, Georgia market for their advertising purposes.

Cox also suggests that the Federal Aviation Administration is not located in Hampton; that assertion is also untrue. The Atlanta area Air Route Traffic Controller's Office is located on Woosley Road in Hampton and employs approximately 400 employees.

III. Conclusion

In light of all the foregoing, there is no merit to the respective positions of either Dogwood or Cox. Their respective submissions in this proceeding should be expeditiously dismissed or denied, and USBLP's rulemaking proposal for WPEZ(FM) should be expeditiously granted in the public interest.

Respectfully submitted,

U. S. BROADCASTING LIMITED PARTNERSHIP

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April 29, 1998

Exhibit 1

ENGINEERING STATEMENT
IN SUPPORT OF REPLY COMMENTS OF
U. S. BROADCASTING LIMITED PARTNERSHIP
IN CONNECTION WITH THE
NOTICE OF PROPOSED RULE MAKING
IN MM DOCKET NO. 98-18
CONCERNING STATION WPEZ (FM)
HAMPTON, GEORGIA

This Engineering Statement, prepared on behalf of U.S. Broadcasting Limited Partnership (USBLP), concerns the counterproposal filed in MM Docket No. 98-18 by Dogwood Communications, Inc. (Dogwood), licensee of FM broadcast station WAMJ on Channel 298A (107.5 MHz) at Roswell, Georgia.

Background

USBLP is the licensee of FM broadcast station WPEZ on Channel 300C1 (107.9 MHz) at Macon, Georgia. USBLP proposed in RM-9204, MM Docket No. 98-18, to modify WPEZ's license to change the city of assignment to Hampton, Georgia. No change in channel or class was proposed. A reference point for the allocation of Channel 300C1 at Hampton was provided in USBLP's petition for rule making and in the Commission's Notice of Proposed Rule Making (NPRM) in MM Docket No. 98-18. This reference point, having geographic coordinates of 33° 15' 30" North Latitude, 84° 26' 21" West Longitude, provided a location where WPEZ could operate in full compliance with the minimum separation requirements listed in Section 73.207 of the Commission's Rules. The reference point is also

sufficiently close to Hampton so as to provide the principal community coverage (ie, 3.16 mV/m) over Hampton as required by Section 73.315 of the Commission Rules. The Commission released the text of the NPRM in MM Docket No. 98-18 on February 20, 1998.

On April 13, 1998, Dogwood submitted a counterproposal in MM Docket No. 98-18, which claims that its recently- filed one-step upgrade application (FCC File No. BPH-980309IE) to upgrade station WAMJ from a Class A to a Class C3 facility on Channel 298, is mutually exclusive with the USBLP rule making proposal for WPEZ to operate on Channel 300C1 at Hampton, Georgia. Dogwood suggests that the Commission should either reject the USBLP proposal or, alternatively, that the Commission should modify the USBLP reference point for WPEZ on Channel 300C1 at Hampton to a location 29.7 kilometers east-southeast of the current reference point (as shown in Commission's NPRM in MM Docket No. 98-18). The Dogwood suggestion contrasts with the following determination reached by the Commission in the NPRM:

"Channel 300C1 can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) southwest of the community to accommodate petitioner's desired transmitter site."